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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/996,278	11/28/2001	David Guedalia	NMS03-14	2332

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EXAMINER
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PHAN, JOSEPH T

ART UNIT	PAPER NUMBER
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2614

MAIL DATE	DELIVERY MODE
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07/27/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Office Action Summary</b></p>	<b>Application No.</b> 09/996,278	<b>Applicant(s)</b> GUEDALIA ET AL.	
	<b>Examiner</b> Joseph T. Phan	<b>Art Unit</b> 2614	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 November 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 5, 6, 8, 10, 11, 15, 16, 18, 20-22, 25-27, 30-32, 35-37 and 40-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 5, 6, 8, 10, 11, 15-16, 18, 20-22, 25-27, 30-32, 35-37, 40-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### DETAILED ACTION

1. It is noted that the prior office action(sent 02/08/2007) has been vacated due to the inadvertent oversight of newly submitted claims 43-45. Since claims 43-45 were newly submitted, a new ground of rejection(112, first paragraph) set forth below has been issued. This current office action is sent in place of the prior office action sent 02/08/2007.

#### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 43-45 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claims 43-45 recites the phrase "*at least one of the group consisting of background noise and background music.*" The term "consisting" is a closed limitation which should only consist of "noise and music" as the claims recite. However, the specification discloses the group consisting of background "noise, silence, or music" (see page 8 lines 13-14 of specification) which the claims do not recite. Appropriate clarification and/or correction is required.

#### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1, 5, 6, 8, 10, 11, 15, 16, 18, 20-22, 25-27, 30-32, 35-37, and 40-45  
rejected under 35 U.S.C. 102(e) as being anticipated by Owensby, Patent  
#6,647,257.**

Regarding claims 1 and 11, Owensby teaches a system and method for providing enhanced quality audio streaming(Fig.1), the system and method comprising:

an audio streaming server(18 Fig.1) providing an audio stream, a client including a buffer(20 Fig.3) storing at least portions of said audio stream received from said audio streaming server(Fig.2 and col.19 lines 5-18), a buffer status sensor operative to monitor the contents of said buffer(20 Fig.3 and col.21 lines 28-57), said buffer status sensor comprising an audio sampler sampling portions of said audio stream(col.21 lines 28-35), wherein said audio sampler is voice command responsive(col.22 lines 35-55, col.18 lines 58-67, and col.21 lines 60-67; *Call management system 20 is an audio sampler that is voice command responsive*); and

a client audio output enhancer operative in response to an output from said buffer status sensor for providing a modified audio stream output including inserted pre-recorded informational audio segments which were not received from said audio

streaming server(20 Fig.2/3, col.19 lines 10-18 and col.21 lines 41-43).

Regarding claims 5 and 15, Owensby teaches a system and method according to claims 2 and 12 and wherein said inserted audio segments comprise advertisements (col.19 lines 5-18)

Regarding claims 6 and 16, Owensby teaches a system and method according to claims 1 and 11 and wherein said client comprises a telephone(12 and 20 Fig.1)

Regarding claims 8 and 18, Owensby teaches a system and method according to claims 1 and 11 wherein said client comprises a telephone and an IVR(21 Fig.1)

Regarding claims 10 and 20, Owensby teaches a system and method according to claims 1 and 11 and wherein said client provides a real time output(col.19 lines 5-67).

Regarding claim 21 and 31, Owensby teaches a system and method for providing sophisticated seeking in an audio stream(Fig.1), the system and method comprising an audio streaming server providing an audio stream an audio sampler, intermittently sampling portions of said audio stream, wherein said audio sampler is voice command responsive(col.22 lines 35-55 and col.18 lines 58-67);

an audio sampling store, storing said portions sampled by said audio sampler; and an audio stream portion navigating seeker operative to sequentially render said portions; and inserting at least one informational audible tone among said portions rendered thereby(Fig.2 and col.18 line 58-col.19 line 67).

Regarding claims 22 and 32, Owensby teaches a system and method according to claims 21 and 31 operative to sample complete phrases(Fig.2 and col.18 line 58-col.19 line 67).

Regarding claims 25 and 35, Owensby teaches a system and method according to claims 21 and 31 and wherein said audio sampler samples portions which are selected generally periodically(Fig.2 and col.18 line 58-col.19 line 67).

Regarding claims 26 and 36, Owensby teaches a system and method according to claims 21 and 31 and wherein said audio stream portion navigating seeker is operative to render via a telephone(Fig.2 and col.18 line 58-col.19 line 67).

Regarding claims 27 and 37, Owensby teaches a system and method according to claims 21 and 31 and wherein said audio stream portion navigating seeker is operative to render via an IVR and a telephone(Fig.1 and col.18 line 58-col.19 line 67).

Regarding claims 30 and 40, Owensby teaches a system and method according to claims 21 and 31 and also comprising a user operative, seeking responsive audio stream renderer, operative to render the audio stream beginning from a sampled portion selected by a user(Fig.2 and col.18 line 58-col.19 line 67).

Regarding claims 41 and 42, Owensby teaches the method of claim 11 and system of claim 1 wherein said client audio output enhancer provides audible cues from a sample of audio selected by a user, enabling said user to better orientate said user with said audio stream(Fig.2 and col.18 line 58-col.19 line 67).

Regarding claims 43-45, Owensby teaches the system and method of claims 1, 11, and 31 wherein said pre-recorded audio segments, said providing a modified audio stream, and at least one audio tone includes at least one of the group consisting of

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background noise and background music(*col.19 lines 10-18; inserted advertisements is noise/music*).

### **Response to Arguments**

5. Applicant's arguments filed 11/06/2006 have been fully considered but they are not persuasive. Applicant argues that the prior art of record, Owensby, does not read on the claims, more specifically, applicant requests examiner to indicate which elements in Owensby reads on the elements of the claims.

It is noted that since claim 1 as currently recited does not separate the elements as being different from each other, Owensby Call Management System(20 of Fig.2 and Fig.3) can read on the claimed elements as it can perform the actions of the elements(i.e. buffer, sensor, audio sampler, and output enhancer).

Furthermore, claim 11 is a method claim which Owensby clearly reads upon without the need for detailed explanation.

Therefore, examiner maintains the rejection until further detail is amended into the claims.

### **Conclusion**

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the

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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph T. Phan whose telephone number is (571) 272-7544. The examiner can normally be reached on Mon-Fri 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fan Tsang can be reached on (571) 272-7547. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JTP  
July 20, 2007



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